



IN THE  
UNITED STATES  
PATENT AND TRADEMARK OFFICE

DAC/A  
#3

IN RE APPLICATION OF: Winter  
CASE: POW-001342  
SER. NO.: 09/899,523  
FILING DATE: July 5, 2001  
FOR: LEAK SENSOR FOR  
FLOWING ELECTROLYTE  
BATTERIES

PETITION UNDER  
37 CFR 1.47(b) and  
RESPONSE TO FILE  
MISSING PARTS

RECEIVED  
MAR 08 2002  
OFFICE OF PETITIONS

HONORABLE COMMISSIONER  
FOR PATENTS  
2900 Crystal Drive  
Arlington, VA 22202-3513

ATTENTION OF:

EXAMINER:

Dear Sir or Madam:

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 50-0545.

This petition is submitted, concurrently with the Supplemental Declaration and Power of Attorney, and in response to the Notice to File Missing Parts mailed on August 23, 2001. The requisite fees are enclosed.

03/08/2002 SSANDARA 00000001 09899523

03 FC:217 460.00 OP

07/29/2002 AKELLEY 00000036 500545 09899523

01 FC:218 260.00 CH

FACTOR & PARTNERS, LLC.  
1327 West Washington Blvd  
Suite 5G/H  
Chicago, IL 60607

Jody L. Factor

34157

This petition is pursuant to 37 CFR 1.47(b), as the sole inventor of the above-identified application has, in effect, refused to execute the above-identified patent application. Under 37 CFR 1.47(b), a person who has a significant proprietary interest in the matter may make application on behalf of and as an agent for the inventor. Such an application must be accompanied by:

1. an oath or declaration showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage;
2. factual proof that the all of the inventors refuse to execute the application or cannot be reached after diligent effort;
3. the fee set forth in section 1.17(h); and
4. the last known address of the non-signing inventor.

With respect to item (1), attached is the declaration executed by Mr. John L. Dotson III, Vice President, General Counsel on behalf of POWERCELL CORPORATION.

With respect to item (2), attached is a declaration of Mr. Jody L. Factor providing factual proof that the inventor has refused to execute the application after diligent effort.

With respect to item (3), attached is a check in the amount of \$130.00 which corresponds to the fee set forth in section 1.17(h).

With respect to item (4), the last known address of Mr. Winter (the inventor) is 246 Canyon Woods Way, Suite C, San Ramon, California, 94583.

In light of the foregoing, Applicant respectfully requests the granting of the petition.

As a clerical matter, Applicant submits that a response to the Notice to File Missing Parts was originally due on October 23, 2001. In turn, Applicant respectfully requests a three-month extension of time up to and including February 23, 2002.

The Notice to File Missing Parts indicated that the drawings as submitted at the time of filing did not have the correct margins. Applicant submits herewith substitute drawings which are in compliance with 37 C.F.R. 1.84(g).

In addition, Attached is a check in the amount of \$895.00, corresponding to the 1.) basic filing fee for a small entity (\$370.00); 2.) surcharge for late oath or declaration (\$65.00); and 3.) three-month extension of time fee (\$460.00).

Should anything further be required, a telephone call to the undersigned at (312) 226-1818 is respectfully solicited.

Respectfully submitted,

Dated: February 20, 2002

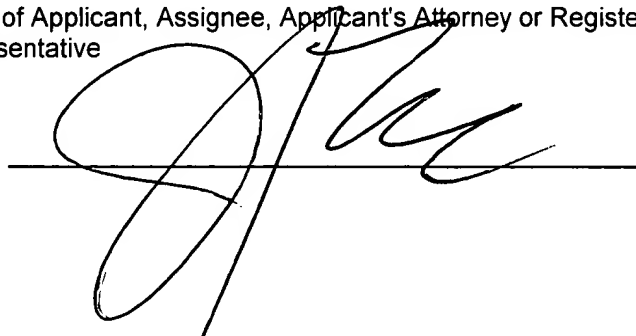
  
\_\_\_\_\_  
Jody L. Factor  
Attorney for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents & Trademarks, Washington, D.C. 20231 on February 20, 2002.

Jody L. Factor

Name of Applicant, Assignee, Applicant's Attorney or Registered Representative

  
\_\_\_\_\_



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RE APPLICATION OF: Winter

CASE: POW-001342

SERIAL NO.: 09/899,523

FILED ON: July 5, 2001

FOR: LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES

STATEMENT OF FACTS OF JODY L. FACTOR IN SUPPORT OF THE PETITION UNDER  
37 C.F.R. 1.47(b)

The Honorable Commissioner of Patents  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Sir:

I, Jody L. Factor, a citizen of the United States of America, declare that:

1. I am a partner in the law firm of FACTOR & PARTNERS, LLC., having a place of business at 1327 West Washington Blvd., Suite 5G/H, Chicago, IL, 60607.
2. My firm represents POWERCELL CORPORATION for intellectual property matters.
3. On July 5, 2001, we filed a patent application on what became U.S. Serial No. 09/899,523 (the "Application") with the United States Patent and Trademark Office naming Rick Winter as the sole inventor.
4. Mr. Winter provided the invention disclosure of the Application and identified himself as the sole inventor of same.
5. After inquiry, it was believed that Mr. Winter was indeed the sole inventor of the Application.

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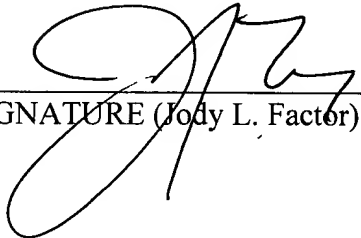
04 FC:122

130.00 0P

6. Mr. Winter reviewed and approved the Application prior to filing, but failed to transmit a previously supplied Declaration and Power of Attorney document.
7. The Application was filed with an unsigned Declaration so as to avoid a potential "on sale bar."
8. On July 12, 2001 my offices provided POWERCELL CORPORATION with a copy of the filed Application along with a second copy of the Assignment and Declaration and Power of Attorney documents to be executed by Mr. Winter.
9. During numerous telephone conversations between the undersigned and Mr. Winter regarding the signing of such documents as transmitted to him, Mr. Winter orally agreed to sign such documents and transmit such executed documents to FACTOR & PARTNERS, LLC. via facsimile. However, these documents were never received.
10. On September 13, 2001, my offices provided POWERCELL CORPORATION with the Filing Receipt for the Application along with another reminder for Mr. Winter to fully execute the documents.
11. In furtherance of the reminder of September 13, 2001, numerous follow-up telephone calls were made directly to Mr. Winter inquiring about the status of the documents. Each such conversation resulted in an assurance by Mr. Winter that he would indeed sign and transmit the documents to my offices. However, the documents were never received.
12. After another telephone call to Mr. Winter, on January 23, 2002, a final letter of correspondence regarding the execution of the documents was sent, via Federal Express, to Mr. Winter's last known home address of 246 Canyon Woods Way, Suite C, San Ramon, California, 94583, again requiring the signature and return of the required documents.
13. As of February 18, 2002, the signed documents remain undelivered to my offices.
14. Although Mr. Winter never formally refused to sign the documents, his failure to do so after numerous requests results as a refusal to execute the documents.

15. All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application or any patent resulting therefrom.

DATED THIS 20<sup>th</sup> day of February, 2002

  
\_\_\_\_\_  
SIGNATURE (Jody L. Factor)

Law Offices  
**FACTOR & PARTNERS, LLC**  
1327 West Washington Blvd., Suite 5G/H  
Chicago, Illinois 60607  
Telephone (312) 226-1818  
Facsimile (312) 226-1919  
Direct e-mail: jfactor@factor-ip.com

United States and International  
Intellectual Property Law

Michigan Office:  
305 Hoover Blvd., Suite 300  
Holland, Michigan 49423  
Telephone (616) 355-0400  
Facsimile (616) 355-9862

January 23, 2002

**VIA FEDEX**

**URGENT!**

Mr. Rick Winter  
246 Canyon Woods Way  
Suite C  
San Ramon, CA 94583

Re: U.S. Patent Applications on

- CHARGING SYSTEM FOR SECONDARY BATTERIES
- LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES
- APPARATUS AND METHOD FOR INDEPENDENTLY OPERATING A PLURALITY OF AC VOLTAGE SOURCES IN PARALLEL
- LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES
- SYSTEM AND METHOD FOR PROVIDING ELECTRIC POWER

Our File Nos. 011190, 011209, 001341, 001342, and 001290, respectively

Dear Rick:

This letter is pursuant to our previous and numerous telephonic discussions and transmittals regarding the procurement of your signature on documents pertaining to the prosecution of the above-mentioned patent applications.

As you will recall, on a number of previous occasions we have spoken with you about and sent to you by FedEx documents pertaining to declaration of inventorship and assignment of invention for these five patent applications. For your convenience, we also included copies of each patent application as filed with the USPTO. Despite our previous transmittals and telephonic discussions, as well as your oral promise that you would execute these documents and return them to our office in a timely manner, we have yet to receive these documents with your signature.

The due date for receipt of these documents by the United States Patent and Trademark Office is rapidly approaching, and for some of the applications, has already passed. Accordingly,

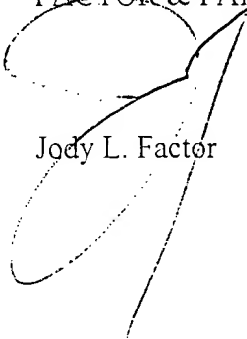
FACTOR & PARTNERS, LLC

please sign and date the enclosed assignment and declaration documents and return the same to our office by facsimile. with the originals to follow by regular mail. Again, **your timely cooperation is appreciated.**

It is not our wish to further inconvenience you at your home, either telephonically or by additional mailings. Therefore, should you have any questions or comments regarding this matter, please do not hesitate to contact me immediately. We look forward to your earliest reply.

Sincerely,

FACTOR & PARTNERS, LLC



Jody L. Factor

cc: John Dotson  
Enclosures



Law Offices  
**FACTOR & PARTNERS, LLC**  
1327 W. Washington Boulevard, Suite 5G/H  
Chicago, Illinois 60607  
Telephone (312) 226-1818  
Facsimile (312) 226-1919

United States and International  
Intellectual Property Law

Michigan Office:  
305 Hoover Blvd., Suite 300  
Holland, Michigan 49423  
Telephone (616) 355-0400  
Facsimile (616) 355-9862

September 13, 2001

Mr. John Dotson  
POWERCELL CORPORATION  
35 Corporate Drive, Suite 190  
Burlington, MA 01803

Re: U.S. Patent Application on  
LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES  
Our File No. 001342

Dear John:

We are pleased to advise you that acknowledgment has been received from the United States Patent and Trademark Office (USPTO) concerning the filing of the above-identified patent application. Serial No. 09/899523 has been assigned to this application under the filing date of July 5, 2001. A copy of the official filing receipt is enclosed.

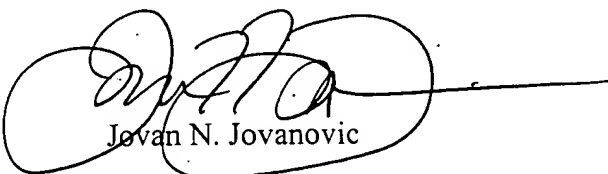
We also await the return of the signed Declaration and Assignment forms. The signed Declaration must be submitted to the Patent Office by **October 23, 2001**.

In addition, in accordance with the USPTO's Rule with respect to the Duty of Disclosure, please provide us with any additional (if any) material prior art of which you are aware. Such prior art would be deemed material if it would help an Examiner at the USPTO in his/her examination of your application.

Should you have any questions or comments regarding the foregoing, please do not hesitate to contact our offices.

Very truly yours,

FACTOR & PARTNERS, LLC

  
Jovan N. Jovanovic

Law Offices  
**FACTOR & PARTNERS, LLC**  
1327 W. Washington Boulevard, Suite 5G/H  
Chicago, Illinois 60607  
Telephone (312) 226-1818  
Facsimile (312) 226-1919

United States and International  
Intellectual Property Law

Michigan Office:  
305 Hoover Blvd., Suite 300  
Holland, Michigan 49423  
Telephone (616) 355-0400  
Facsimile (616) 355-9862

July 12, 2001

Mr. John Dotson  
POWERCELL CORPORATION  
35 Corporate Drive, Suite 190  
Burlington, MA 01803

Re: U.S. Patent Application on  
LEAK SENSOR FOR FLOWING ELECTROLYTE BATTERIES  
Our File No. 001342

Dear John:

This is to inform you that we filed the above-identified patent application with the Patent Office on Thursday, July 5, 2001. Enclosed is a copy for your file. As soon as we receive the official Filing Receipt, we will send a copy of it to you.

Also enclosed is an Assignment form and a Declaration and Power of Attorney form for Rick Winter's signature. Please have him sign and date the documents where indicated and return the fully executed originals to our office as soon as possible.


In addition, in accordance with the USPTO's Rule with respect to the Duty of Disclosure, please provide us with any material prior art of which you or the inventor are aware. Such prior art would be deemed material if it would help an Examiner at the USPTO in his/her examination of your application. If no such prior art exist, please inform us of that as well. Please note that the Duty of Disclosure continues throughout the entire prosecution of the U.S. application. Therefore, if you become aware of any additional prior art, at any time in the future (and prior to issuance of the U.S. application), please be sure to provide us with copies so that we may submit them to the USPTO.

FACTOR & PARTNERS, LLC

Should you have any questions or comments regarding the foregoing, please do not hesitate to contact our offices.

Very truly yours,

FACTOR & PARTNERS, LLC



Jovan N. Jovanovic

JNJ/jm  
Enclosures

UNITED STATES PATENT & TRADEMARK OFFICE  
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: \_\_\_\_\_

2 Serial/Patent # 09/899,523

3 Please refund the following fee(s):

4 PAPER  
NUMBER

5 DATE  
FILED

6 AMOUNT

Filing

Amendment

Extension of Time

Notice of Appeal/Appeal

☒ Petition

Issue

Cert of Correction/Terminal Disc.

Maintenance

Assignment

Other

3

35-02

\$ 130.00

7 TOTAL AMOUNT  
OF REFUND

\$

10 REASON:

Overpayment

Duplicate Payment

☒ No Fee Due (Explanation):

Petition moot

8 TO BE REFUNDED BY:

Treasury Check

Credit Deposit A/C #:

50--0545

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Derek L. Woods

TITLE: Attorney

SIGNATURE: Derek Woods

PHONE: 305-0014

OFFICE: Petitions

\*\*\*\*\*  
THIS SPACE RESERVED FOR FINANCE USE ONLY:  
\*\*\*\*\*

APPROVED: Alicia Kelly

DATE: 7/29/02

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to: